or 950 dialing plans (see Part III, Section A supra for a complete discussion of dialing 800 or 950 plans); and 2) the amount of long distance calling is minimized by the existence in many of GTE's markets of wide toll-free calling areas. If Equal Access were deemed beneficial by cellular customers, then RBOC cellular carriers would have dominated each of their markets to the detriment of others such as GTE. That has not happened.

**2. The imposition of Equal Access does not translate per se into lower rates for cellular subscribers.**

It is not clear that the implementation of Equal Access would automatically result in lower rates for cellular subscribers. There is evidence to suggest that recently basic MTS rates for long distance service have risen.[12] Further, the cost savings a subscriber could receive from lower long distance charges would likely be negated by the enormous costs of implementing Equal Access in a cellular environment. As will be discussed in Part VI, Section B infra, GTE's cost for implementing Equal Access is estimated to exceed $23 million. Whether that cost is passed on directly or indirectly to the subscriber, it could easily overwhelm any cost savings that would result from potentially lower IXC rates.

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[12] See graph entitled "Trends in Long Distance Rates and Exchange Access Charges," Business Communications Review, February 1993, as reprinted in Economic Impact of Eliminating The Line-of Business Restrictions on the Bell Companies, prepared by the WEFA Group, July 1993.

### 3. Technological innovations will be brought to subscribers with or without Equal Access.

Equal Access is not the engine for technological change, competition is. Cellular carriers continuously attempt to distinguish themselves from one another by providing subscribers with a technological edge. The effort to bring forth innovations will redouble as new competitors, such as wide-area SMR and PCS carriers, come to market bearing new technological innovations. In such an environment, Equal Access is not needed to assure innovation.

## B. Due to the Cost of Equal Access Conversion, Any Potential Decrease in Long Distance Prices Would Be More than Offset by Increases in Cellular Prices

GTE estimates that its cost for implementing Equal Access would be more than $23,000,000, and if the Commission decides to alter cellular calling areas to customers' detriment, the expense would be even greater. This substantial expenditure will be necessary to pay for presubscription and balloting; new billing software; network modification; new customer activation software; interconnection negotiations with IXCs; and additional customer service resources.

If cellular calling areas were changed, GTE would also incur a significant loss of capital investment due to the obsolescence of many of its multiple-segment, high-capacity microwave backbone networks that cross LATA boundaries.

These microwave backbone networks currently provide essential support to cellular operations, and represent a substantial investment in capacity by GTE. Equal Access restrictions on the continued operation of inter-LATA microwave hops would require GTE to abandon this substantial investment in portions of, or even entire, microwave backbone routes.

The above costs are expenses that GTE would bear if Equal Access were implemented. However, any discussion of the costs of Equal Access would be deficient unless it recognized the costs that Equal Access could directly place on cellular subscribers.[13] If toll-free calling areas were reduced or eradicated by the implementation of Equal Access, cellular subscribers would incur significant additional IXC charges for cellular calls which were formerly toll-free. See Part IV, Section B, supra.

As discussed, GTE believes the costs of implementing Equal Access are significant and could eclipse any potential cost savings. However, the necessity for a benefits-cost analysis is rendered moot when one considers that cellular subscribers could today select an IXC utilizing 800 and 950

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[13] If history is an accurate guide, the implementation and administration of Equal Access and any reconfigured calling areas would also require the significant expenditure of Commission resources over and indefinite period. In addition, given the myriad implementation and administrative issues that would arise, it is also foreseeable that significant judicial resources would be expended.

numbers and that 75% of all cellular POPs may soon be able to utilize 1+ dialing if they so desire.

## VII. The Original Rationale for Equal Access Is Inapplicable in the Cellular and CMRS Context

### A. The Judicial Origin of Equal Access

"Equal Access" first emerged from a federal court's modification and approval of a consent decree between the Bell System and the Department of Justice, which required AT&T to divest itself of its Regional Bell Operating Companies ("RBOCs"). United States v. American Tele. and Tele. Co., et al., 552 F. Supp. 131, 160 (D.D.C. 1982), aff'd sub nom, Maryland v. United States, 460 U.S. 1001 (1983). [hereinafter "MFJ"].

The original reason that Equal Access was required in the MFJ was that one carrier had control over and exploited bottleneck facilities through dominance of both interexchange and local telecommunication. As a practical matter, this arrangement impeded end users' ability to conveniently select alternate IXCs.

The MFJ required that the RBOCs provide Equal Access to all interexchange carriers ("IXCs"), id. at 142, 196, and established the LATA service area boundaries. Id. at 229, 232-34. Subsequently, the District Court held that mobile radio services were "exchange telecommunications services" within the meaning of the MFJ, subjecting RBOC mobile service to Equal Access and requiring that any RBOC mobile

service crossing LATA boundaries be handed off to an IXC. United States v. Western Electric, Co., et al., 578 F. Supp. 643, 644-46 (D.D.C. 1983).

### B. The Extension of Equal Access to the GTE Telephone Operating Companies

Two months after entry of the MFJ in August, 1982, GTE Corporation announced its acquisition of Southern Pacific Communications Inc. and Southern Pacific Satellite Corporation in October, 1982. As a condition permitting the acquisition, the Department of Justice negotiated a consent decree with GTE Corporation (the "GTE Consent Decree"), which required, among other restrictions, provision of Equal Access by the GTE Telephone Operating Companies ("GTOCs"). See United States v. GTE Corp., 1985-1 Trade Cas. (CCH) ¶ 66,355 (D.D.C. 1985). The District Court, in approving the GTE Consent Decree, found that the agreement to provide Equal Access by the GTOCs, just as for the RBOCs, "ha[d] a common purpose: to prevent the defendant companies from impeding competition, by the use of local telecommunications monopoly bottlenecks, in markets where competition [was] technologically infeasible." United States v. GTE Corp., 603 F. Supp. 730, 752 (D.D.C. 1985)(emphasis added).[14]

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[14] The FCC later imposed Equal Access with less strict time requirements upon the remaining independent Local Exchange Carriers ("LECs") in MTS & Market Structure, Phase III, Establishment of Physical Connections and Through Routes Among Carriers, Report and Order, 100 F.C.C.2d 860 (1985), recon. denied, 59 R.R.2d (P&F) 1410 (1986). The independent LECs generally supported, rather than opposed, implementation of Equal Access. Id. at 866, 869. Thus, to date, those carriers that have been subject to Equal Access either:

The GTOCs were defined as the corporations listed in Appendix A of the GTE Consent Decree, their successors and assigns, and "any entity hereafter acquired by GTE that provides any regulated wireline exchange telecommunications and exchange access services in a manner similar to that of a GTOC, . . . but shall not include GTE Corporation or any affiliate of GTE not having an ownership interest in a GTOC."[15] GTE Corporation's cellular subsidiary, GTE Mobilnet Incorporated, was not included in Appendix A, nor of course, was, or is it a provider of wireline exchange telecommunications.

The policy reasons for not including GTE's cellular business in the restrictions placed on the GTOCs were sound and valid in 1982 and remain so today. Cellular telecommunications is based on mobility and is not constrained by the regulatory strictures which grew up around the wireline telecommunications business dominated until 1984 by the Bell System which controlled ninety percent of all telecommunications in the United States.

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a) consented to it to achieve a business result; or b) supported it. Cellular and other CMRS carriers should not now have it forced upon them.

[15] United States v. GTE Corp., 1985-1 Trade Cas. (CCH) at 64,772. The list of GTOCs contained in Appendix A listed only wireline exchange carriers. Id. at 64,778.

### C. Cellular Facilities Are Not Bottleneck Facilities, and There Has Been No Determination That Cellular Carriers Possess Market Power

Equal Access was originally based, as the District Court stated, on the fact that the RBOCs controlled and possibly exploited bottleneck facilities while in common ownership with an IXC. Thus, end users could be precluded from selecting an IXC. The NPRM/NOI's tentative conclusion ignores the historic basis which Equal Access was initiated and has no basis in the record to demonstrate that any conditions requiring mandatory Equal Access exist today for cellular carriers. Rather than requiring a finding that cellular carriers exercise market control and exploit bottleneck facilities through the common ownership of local and interexchange carriers, the Commission's analysis suggests that by exercising market power alone, cellular carriers could foreclose the ability for IXCs to access cellular carriers and preclude cellular subscribers from selecting IXCs. This analysis is fundamentally flawed because cellular subscribers, through dialing plans, can access the IXC of their choice.

#### 1. Cellular carriers do not control bottleneck facilities.

A "bottleneck facility," in antitrust terms, is an essential facility; in wireline telephony, it is the sole possession of switches and wires that connect to the PSTN. See Western Electric, 673 F. Supp. at 536-37. Cellular carriers do not control bottleneck facilities and do not

prevent end users from accessing IXCs or the PSTN.[16] The Commission itself has noted that cellular carriers may not control bottleneck facilities. NPRM/NOI at 42, ¶ 99.

**2. Cellular carriers exhibit competitive behavior rather than monopolistic power.**

Market power requires the actual ability to control prices or exclude competition, see Metro Mobile CTS, Inc., et al. v. NewVector Communications, Inc., et al., 892 F.2d 62, 63 (9th Cir. 1989),[17] for a significant period of time.[18] The NPRM/NOI's apparent reliance on market power as the sole rationale for its tentative conclusion is unprecedented because it abandons the original prerequisites for the imposition of Equal Access. This reliance on market power would yield the illogical result that a cellular carrier could be found to preclude subscriber IXC choice even though the subscriber had the ability to select any IXC via 800, 950 or 10XXX dialing plans.

A review of the cellular marketplace reveals that it is vibrantly competitive and responsive to consumer demand, rendering Equal Access unnecessary and contrary to the

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[16] See Part III, supra, for a discussion of 800, 950, and 10XXX dialing plans.

[17] The Court in Metro Mobile found that "Blind reliance upon market share, divorced from commercial reality, [can] give a misleading picture of a firm's actual ability to control prices or exclude competition." Metro Mobile, 892 F.2d at 63 (citation omitted).

[18] See also NPRM/NOI at 18, n.86, where the FCC adopted the Department of Justice's market power definition.

public interest. The ample evidence of competition includes an absolute, market driven decline in cellular prices[19] and significant barriers to collusion[20] and the discretionary nature of cellular service for the majority of consumers. Also demonstrative of the competitive cellular environment is GTE's steady introduction of new services and development of new technology.

**a. Economic analysis of the cellular market demonstrates that the cellular market is substantially competitive.**

In response to the Commission's request for evidence of competition,[21] GTE commissioned a study of wireless competition from Charles River Associates, Inc. ("CR"), a respected firm in the field of the economics of telecommunications markets. The resultant study, entitled Concentration, Competition and Performance in the Mobile Telecommunications Market [hereinafter CR Study], is provided as Attachment A. CR concludes that the cellular market is substantially competitive, with several significant barriers to collusion. Id. at 9-10.

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[19] See, e.g., United States General Accounting Office Report to the Honorable Harry Reid, U.S. Senate, GAO/RCED-92-220, Telecommunications: Concerns About Competition in the Cellular Telephone Service Industry, 1, 22-25 (July 1992).

[20] We note that the Commission has never found anticompetitive collusion in the cellular industry; in fact, the Commission has stated that there may be several restraints on collusion between cellular carriers. CMRS Second Report and Order at 1470-71, ¶¶ 147-49.

[21] See NPRM/NOI at 19, ¶ 34.

CR finds that real prices for cellular telephones and service have steadily declined since the inception of the cellular industry. Id. at 6-7. As the CR Study amply demonstrates, the current cellular market is competitive, and cellular carriers are consistently seeking to meet the needs of subscribers. CR also concludes that a variety of factors exist in the cellular industry that traditionally are found to encourage competitive behavior. In such a market-driven atmosphere, if Equal Access provided any benefits, consumers would demand and receive it.

**b. The discretionary nature of cellular and the emergence of substitutes for cellular minimize the ability for cellular carriers to exercise market power.**

Because of wireline ubiquity, cellular service remains a discretionary purchase. In contrast to the landline telephone penetration rate of approximately 94%, cellular has a penetration rate of only approximately 7%. The existence of alternatives to cellular service minimizes cellular carriers' ability to exercise market power and provides a strong motivating force for carriers to compete for subscribers by constantly improving service quality and coverage.

**c. GTE's history of introducing new services illustrates that cellular is competitive and market-driven.**

GTE has actively and continuously developed cellular services and products for current subscribers while striving

to attract new customers. Examples of newer services that are offered include emergency roadside assistance, voice mail, and facsimile mail (which is similar to voice mail). Some cellular systems have implemented "modem pool technology" which enables cellular subscribers to more quickly and reliably send and receive data over cellular networks. GTE continues to explore new opportunities for providing innovative services, such as digital packet data services and other services, to meet customer demands in the evolving telecommunications marketplace.

**d. GTE's development of new technology to expand capacity and improve the quality of service was achieved in response to a competitive market.**

GTE has developed a variety of new technologies over the years in order to provide the best cellular service possible. A few examples of new technology developed and deployed by GTE include Follow-Me-Roaming®, a patented, award-winning innovation which enables cellular subscribers to automatically receive calls when roaming outside of their home systems. More recently, GTE has introduced Follow-Me-Roaming® Plus℠, a call-delivery system that utilizes the latest IS-41 Rev. A technology. GTE was also instrumental in developing the NetAlert™ Real-Time Analysis System, a powerful turnkey system used to minimize cellular network service interruptions. To protect cellular subscribers and carriers from fraud, GTE developed Positive Validation Service℠, FraudManager℠, and CloneDetector℠. The ability to

rapidly develop and implement advances in cellular technology allows GTE to remain competitive in the cellular marketplace.

### D. With the Introduction of Wide-Area SMR and PCS, Competition Will Continue to Increase, Making Equal Access All the More Unnecessary in the Future

As competitive as the cellular market has proven to be, PCS carriers and wide-area SMR providers will add a new dimension to the level of competition.[22] According to FCC estimates, in addition to two cellular licensees, there will soon be as many as six PCS licensees, Second Report and Order at 1464, ¶ 127, and several wide-area SMR licensees in any given market. There will also be a dramatic increase in spectrum availability: a jump from 50 MHz to a minimum of 170 MHz.[23] Just within the last few months, the Commission has taken action that will strengthen broadband PCS and wide-area SMR competitors.[24] CR found that in the wireless

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[22] Wide-area SMR carriers plan to provide digital quality and enhanced services and tout themselves as a "true alternative" to cellular providers. SMR Groups Band to Create Digital Wireless Network, Radio Communications Report (March 22, 1993). In addition, last year eight major wide-area SMR carriers formed a consortium to provide nationwide, uniform roaming and network management. Eight Major SMR Operators Announce Their Consortium's Plans for ESMR Service, Personal Communications Industry Association Bulletin (July 2, 1993).

[23] This figure includes only broadband PCS spectrum; even more capacity will be available with the addition of wide-area SMR carriers.

[24] The Commission has determined that the PCS spectrum blocks should all be contiguous, Amendment of the Commission's Rules to Establish New Personal Communications Services, (Memorandum Opinion and Order), GEN Docket No. 90-314 (FCC 94-144),

market, competition will become "even more vigorous" with the addition of PCS carriers. Attach. A at 14.

In many markets, a potential wireless subscriber will be faced with a plethora of wireless service providers from which to choose. If the ability to select an IXC is in fact important to subscribers, competition will meet the demand.

With all the additional dynamic competition that PCS and wide-area SMR will bring to the wireless industry, the Commission should allow market forces to dictate whether Equal Access should be provided. In the prevailing spirit of decreased regulation and increased reliance on market forces to determine the value of telecommunications services, mandatory Equal Access for cellular and CMRS providers would be a step backward.[25] The Commission should lift, rather than establish, regulations and allow

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1, 17 (June 13, 1994), reducing the need for PCS carriers to provide costly dual-frequency equipment. Id. The Commission expects that the final configuration of broadband PCS spectrum will encourage outside financial backing of broadband PCS providers, id. at 24, ¶ 57, and thus enhance their ability to compete with cellular carriers. Id. at 24, ¶ 57.

A recent action by the Commission could strengthen wide-area SMR carriers and make them even more imposing wireless competitors. The FCC has tentatively decided to lift wireline restrictions on the ownership of wide-area SMR licenses. Eligibility for the Specialized Mobile Radio Services, (Notice of Proposed Rulemaking), GN Docket No. 94-90 (FCC 94-202), 1, 11-15 (released Aug. 11, 1994).

[25] Commissioner Quello, in a separate statement to the NPRM/NOI, registered his belief that Equal Access might be an outmoded concept.

competition to shape the wireless industry. See CR Study, Attach. A at 19-20. The Commission should therefore refrain from imposing Equal Access on other cellular and CMRS carriers.

## VIII. Equal Access Should Not Be Imposed on Air-to-Ground Providers

As will be discussed herein, air-to-ground Equal Access is not workable due to technical barriers, nor is it necessary in such a competitive market. The Commission has previously recognized the unique nature of ATG service and promulgated policies which have allowed the ATG market to evolve into three systems that vigorously compete with one another.

GTE Airfone first began providing ATG service to the public in 1984. Since that time, the Commission established an "open entry" approach to the licensing of ATG service providers. Amendment of the Commission's Rules Relative to Allocation of the 849-851/894-896 MHz Bands (Report and Order), 5 F.C.C. Rcd 3861, 3869 (1990) [hereinafter ATG Order]. Currently, GTE Airfone competes with two other ATG carriers--Claircom Communications Group, L.P., and In-Flight Phone Corporation.

ATG service carries with it numerous technical demands. First, ATG service is provided in two different environments: a) principally on commercial aircraft where ATG handsets operate essentially as pay telephones for use

by highly transient end users; and b) to a much lesser extent on private aircraft. Second, on a routine basis, as ATG-equipped airplanes fly near or over international borders, service is provided in conjunction with the ground facilities of foreign carriers.

Based on its experience in designing, constructing, and operating a nationwide ATG system capable of supporting international calling, GTE believes that the imposition of Equal Access in the ATG environment is both technically and economically infeasible.

### A. Equal Access is Unnecessary Due to the Vibrant Competition in the ATG Marketplace and ATG End Users' Ability to Select IXCs

#### 1. The FCC established an "Open Entry" ATG Market which is highly competitive.

The Commission adopted an "open entry" plan for ATG services which permits an unlimited number of carriers to enter the ATG market. ATG Order at 3869. Initially, six ATG construction permits were granted and today three ATG carriers compete vigorously for market share. The Commission has determined that no ATG provider is dominant. CMRS Second Report and Order at 1469, ¶ 144.

#### 2. Today GTE Airfone's end users have the ability to easily select the IXC of their choice by dialing an 800 number.

GTE Airfone end users can currently access the IXC of their choice by simply dialing an 800 number. Thus, all GTE Airfone end users on both commercial and private aircraft may choose any IXC they wish to provide service for the

ground portion of their call. Since end users currently have the ability to select the IXC of their choice, Equal Access need not be imposed to accomplish this goal.

#### 3. Private aircraft end users can utilize speed dialing as a viable alternative to Equal Access.

GTE Airfone currently provides speed dialing service to its private aircraft end users as a means to access IXCs. Each private subscriber is provided with a bank of one hundred three-digit numbers that can pre-programmed to access a variety of IXCs. Speed dialing enhances the private end user's ability to select IXCs and would thus obviate the need for Equal Access for private aircraft.

### B. Equal Access is Technically and Economically Infeasible for Air-to-Ground Carriers

#### 1. Equal Access is inappropriate for ATG-equipped aircraft.

Equal Access is inappropriate for commercial ATG-equipped aircraft. In a private landline environment, presubscription allows end users to bill calls made through their IXC of choice to the telephone where the call is made. However, ATG telephones are essentially public pay telephones.[26] ATG commercial aircraft end users, like

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[26] The sole exception is private corporate aircraft, which currently constitute well below 1% of GTE Airfone's total call volume and is not projected to exceed 1% in the future. As discussed in Part VIII, Section A, Subsections 2 and 3 supra private aircraft can utilize both 800 dialing and speed dialing to select an IXC.

landline pay telephone end users, have no permanent relationship to the ATG handset or aircraft.

While landline pay telephone owners are able to presubscribe to an IXC, the hundreds, if not thousands, of transient end users of a given landline pay telephone may prefer a different IXC than the one provided by presubscription. Hence, landline pay telephone owners must provide 800 and 950 dialing access, and will eventually be required to provide 10XXX dialing access. Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation (Order on Reconsideration), 7 F.C.C. Rcd 4355 (1992). Because of the transient nature of passengers on ATG-equipped aircraft, presubscribed Equal Access is as impractical for ATG carriers as it is for landline pay telephones.

**2. Provision of Equal Access on international flights and on domestic flights near national borders would often be impossible.**

Due to the international environment in which ATG service is furnished, Equal Access could not be provided on many flights. ATG-equipped aircraft regularly travel to Asia and Europe. Even on domestic flights, airplanes often fly near or even over the borders of Mexico and Canada. In each of these instances, ATG calls are completed using foreign facilities not licensed by the FCC. Unfortunately, many foreign ground stations, including those located in Mexico, cannot support a presubscribed Equal Access plan.

This impediment would therefore prevent the full availability of presubscribed Equal Access in the ATG environment.

### 3. The cost of modifying the GTE Airfone system to allow for presubscribed Equal Access on board private aircraft would be prohibitively expensive.

While presubscription to an IXC of choice is theoretically possible for private aircraft, the cost of modifying the GTE Airfone system to provide Equal Access to private aircraft would be costly. Software modifications would be necessary to permit the GTE Airfone switches to distinguish between calls from commercial aircraft (equipped with pay telephones) and calls from private aircraft. Development, testing, and deployment of such systems could cost in excess of $225,000.

Unfortunately, while the costs of implementing Equal Access for private aircraft would be significant, the number of private aircraft end users is quite small. Private aircraft currently constitute well below 1% of GTE Airfone's total call volume, and GTE Airfone estimates that private aircraft will continue to account for less than 1% of call volume for the foreseeable future. Thus, if GTE Airfone were to recover the cost of providing Equal Access from its private aircraft end users, the costs would be so prohibitively expensive that they would eclipse any conceivable benefit or cost savings otherwise attributable to Equal Access.

### C. Equal Access Would Eviscerate an FCC Policy Largely Responsible for the Rapid Technological Innovation Which is the Cornerstone of ATG

In recognition of the rapid pace of technological change in ATG, the Commission permitted ATG carriers to develop non-compatible technical standards. ATG Order at 3870, 3874. To encourage ATG carriers to undertake the effort and expense of designing their own systems, the Commission deemed the technical standards of each system to be proprietary and did not require their publication. Id. at 3874. Without the protection afforded by proprietary treatment, ATG carriers would not be able to achieve the benefits of their substantial pioneering efforts. By continuing to afford proprietary status to the technical standards of each carrier, the Commission encourages future innovation.

If Equal Access requirements were imposed, IXCs could be given access to the proprietary technical standards regardless of whether they were to connect to the ATG carriers' ground stations or at the switches. If IXCs were to connect at the ground stations, GTE Airfone would have to disclose, at a minimum, proprietary information to allow the IXCs to decode the air-to-ground link. If IXCs were to connect at the switches, GTE Airfone could have to disclose proprietary information to allow IXCs to locate where the calls originated. After spending years of effort and substantial capital to develop ATG service, ATG

carriers would then lose their right to reap the benefits of their efforts as they would have to disclose this proprietary information to multiple IXCs. Thus, an ATG Equal Access requirement that includes IXC interconnection to either ATG ground stations or switches would seriously chill the future development of ATG technology.

### D. In the ATG Environment, 10XXX Codes Are Not a Viable Alternative to Equal Access

#### 1. Foreign ground systems preclude or severely restrict the instances in which 10XXX dialing codes could be used.

There are significant technical barriers which in concert act to preclude or severely restrict the ability of GTE Airfone to support 10XXX dialing codes as an alternative to Equal Access. Foreign ground telecommunications systems, which are often used to route ATG calls made near or over international borders, cannot support 10XXX codes. Therefore, a consistent dialing plan could not be provided for all users and a significant number of GTE Airfone's calls could not be completed if 10XXX dialing codes were used. As these foreign ground facilities are not owned by GTE Airfone or licensed by the FCC, GTE cannot determine when, or even if, these facilities will ever be able to support 10XXX codes.

#### 2. To accommodate 10XXX codes, new software would have to be developed and implemented by GTE Airfone at a significant cost.

Numerous components of GTE Airfone's system cannot accept 10XXX Codes, and thus, whole segments of GTE

Airfone's system would have to be altered and new software created.[27] For example, new software would have to be developed to enable the ground switch to distinguish between commercial and private aircraft and to process 10XXX codes. GTE Airfone's radio system, which communicates between the ground and the aircraft, is unable to accept 10XXX codes without additional software modifications. The aircraft cabin telecommunications unit ("CTU"), which links the individual handsets on the aircraft to the radio transceivers, cannot accept or validate 10XXX codes without additional software modifications.

In addition, due to the lack of uniform technical standards for ATG, each ATG carrier developed its own unique system. As a result, there is no mass-produced, "off the shelf" software which will allow each ATG carrier to fully support 10XXX codes. Instead, each ATG carrier would have to incur substantial expenses to develop, test and install the required software.[28] GTE Airfone estimates that it would spend over $375,000 to design, test and place into operation

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[27] In addition to ATG carriers, several third parties would have to incur substantial costs to support 10XXX codes. The vendors of In-Flight Entertainment systems ("IFE") have integrated ATG handsets into their IFEs which interface with GTE Airfone's on-board cabin telecommunications unit ("CTU"). In order for IFEs to validate 10XXX codes, each IFE vendor would have to design software which was capable of accomplishing the task, at an estimated cost of $50,000.

[28] Due to the unique technical specifications of each ATG carrier's system, GTE cannot state with certainty that such software can be developed.

the software needed to support 10XXX code dialing at the ground switch, the radio system and the CTU.

## INTERCONNECTION

### IX. There Is No Reason to Depart from the FCC-Endorsed Policy of Negotiated Interconnection Arrangements

The Commission has requested comment on whether interconnection between LECs and cellular carriers should continue to be negotiated contractually in good faith, or whether the Commission should require LECs to provide interconnection under tariff[29] pursuant to Section 203 of the Communications Act. GTE firmly supports the FCC's current policy permitting good faith negotiation for interconnection on a contractual basis. Good faith negotiation is a time-tested, practical, and efficient means for carriers and LECs to arrange interconnection.

The Commission determined in 1981 that LECs should "furnish appropriate interconnection to cellular systems upon reasonable demand . . . and upon terms no less favorable than those offered to the cellular systems of affiliated entities or independent telephone companies." An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems (Report and Order), 469, 496 (1981) [hereinafter Cellular Communications

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[29] The Commission does not presently require the interstate portion of cellular interconnection arrangements to be tariffed. NPRM at 46, ¶ 108.

Systems]; see also An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems (Memorandum Opinion and Order on Reconsideration), 89 F.C.C.2d 58, 81-82 (1982). The Commission further refined this requirement in 1986 by issuing FCC Policy Statement on Interconnection of Cellular Systems, see The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Memorandum Opinion and Order), 59 R.R.2d (P&F) 1275, app. B (1986) [hereinafter FCC Policy Statement]. In the FCC Policy Statement, the Commission required that LECs provide cellular carriers with the interconnection of their choice, either Type 1 or Type 2. Id. at 1284, ¶ 3; see also NPRM/NOI at 32-33, ¶ 71. The Commission also stated that it "must leave the terms and conditions to be negotiated in good faith between the cellular operator and the telephone company." Id. The Commission has, on several occasions, reconfirmed its good faith negotiation policy.[30]

### A. Contractual Negotiation of Interconnection Is Superior to Tariffed Interconnection

Good faith negotiations over interconnection between LECs and cellular carriers are now commonplace, and they

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[30] See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Cellular Interconnection Proceeding) (Memorandum Opinion and Order on Reconsideration), 4 F.C.C. Rcd 2369, 2370-71 (1989); The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services (Declaratory Ruling), 2 F.C.C. Rcd 2910, 2916 (1987).

have proven to be a highly satisfactory means to obtain interconnection.

As the Commission stated in the NPRM/NOI,

> currently, most cellular carriers agree that the process has ultimately resulted in: (1) lower rate levels than tariffing would have produced, given the administrative and other costs incurred in the tariff process; and (2) service arrangements better tailored to particular interconnection needs than would have been possible under a tariffed rate structure. The need for flexibility in structuring interconnection arrangements is particularly important in the mobile services area where technological advances are constantly evolving. . . . Tariffs may not provide sufficient flexibility for crafting multiple options that reflect the different needs of different carriers.

NPRM/NOI at 49, ¶¶ 114-15.

Because negotiation works well, see id., GTE does not perceive any need to require LECs to provide interconnection under tariff. As a matter of company policy, the GTOCs are committed to promoting nondiscriminatory, adaptable interconnection arrangements with wireless carriers. Further, increased regulation is not warranted as statutory and regulatory protection against discrimination already exist.

#### 1. Good faith contractual negotiation allows wireless carriers the flexibility to obtain the specific interconnection arrangements they need.

Contractual negotiations provide a flexible mechanism for obtaining interconnection that meets emerging communications requirements. NPRM/NOI at 49, ¶ 114. Good faith negotiation allows GTE to respond quickly to shifting

customer demand with innovative, effective interconnection that specifically meets customers' needs. Interconnection under tariff would necessarily be structured and pre-determined,[31] and would deter the creation of inventive network design options.[32] Quite simply, tariffs would hinder the timely deliverance of varied interconnection products to wireless carriers.

Flexibility in arranging interconnection with LECs is essential for wireless carriers. Interconnection configurations and services vary from carrier to carrier due to the unique characteristics of each carrier's system and competitive strategy. Cellular carriers should be able "to negotiate for interconnection arrangements adapted to their particular configurations, competitive market strategies, and technical specifications."[33]

In addition, LECs must be able to respond quickly to wireless carriers' interconnection requests so that LECs can

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[31] Nextel has voiced its concern that tariffs could become a "regulatory straightjacket," too rigid to meet evolving technology and too sluggish to address changing interconnection demands. Letter from Nextel of 11/4/93 to Administrative Law Judge for the State of California, on file in Pacific Bell Petition to Modify Decision 90-06-025 of the Public Utilities Commission of the State of California (April 15, 1993).

[32] See Protest of McCaw Cellular Communications, Inc., to the Petition of Pacific Bell to Modify Decision 90-06-025 at 3 (June 1, 1993) [hereinafter McCaw Protest], filed in Investigation on the Commission's Own Motion into the Regulation of Cellular Radiotelephone Utilities, Public Utilities Commission of the State of California, I.88-11-040, A.87-02-017 [hereinafter Cal. PUC Proceeding].

[33] McCaw Protest at 2.